

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT CLERK'S OFFICE

WORCESTER, SS.

2004 JUN 14 P 1:43
CIVIL ACTION NO. 03-2519C

ELIZABETH R. STEFFENBERG,
Plaintiff

v.

T. GENE GILMAN, STEVEN GILMAN,
THE GILMAN INSURANCE
AGENCY, INC., DAVID M. SCOLL,
ARBOR SECURITIES, LTD.,
ALLIANCE INVESTMENT
MANAGEMENT, COMMONWEALTH
FINANCIAL HOLDINGS INC.,
FINANCIAL LINKS, INC.,
T. GILMAN & CO., LTD.,
FIRST ALLIED SECURITIES, INC.,
PENSON FINANCIAL SERVICES, INC.,
AVIVA LIFE INSURANCE COMPANY,
TRADETEK, LTD., TRADETEK, LLC, and
IVY HELIX, LLC,
Defendants.

U.S. DISTRICT COURT
DISTRICT OF MASS.

04-40113-NMG

NOTICE OF REMOVAL

(Pursuant to 28 U.S.C. § 1441(a) and (b))

The defendant, Aviva Life Insurance Company ("Aviva"), respectfully petition this Court for removal of the above-captioned matter from the Worcester Superior Court to the United States District Court for the District of Massachusetts pursuant to 28 U.S.C. § 1441(a) and (b) on the grounds that the plaintiff's Second Amended Complaint; a copy of which is attached hereto, includes a count for civil violation of a federal statute, the

FILING FEE PAID:

RECEIPT # 404346

AMOUNT \$ 150.00

BY DPTY CLK [Signature]

DATE 6-14-04

Racketeer Influenced and Corrupt Organizations (RICO) Act, 18 U.S.C. § 1961, et seq. In further support of this request, Aviva states as follows:

- 1) The plaintiff Elizabeth Steffenberg filed suit on December 31, 2003 in Worcester Superior Court against multiple defendants. Exhibit A, Docket Sheet. Aviva was not a party to that lawsuit.
- 2) On March 16, 2004, the plaintiff amended, but later withdrew, her First Amended Complaint. Id.
- 3) On May 3, 2004, the plaintiff moved to amend her Complaint a second time (Second Amended Complaint) adding Aviva. That motion was allowed. A copy of the Second Amended Complaint (without the attached exhibits) is attached hereto as Exhibit B.
- 4) Pursuant to an agreement between counsel for the plaintiff and counsel for Aviva, Aviva's counsel agreed to accept service of the Second Amended Complaint on behalf of Aviva. Service of the Second Amended Complaint was made on May 17, 2004, when Aviva's counsel learned for the first time the plaintiff's Motion was allowed. Exhibit C – Fax from Christine Collins, counsel for Mrs. Steffenberg, enclosing a copy of the Clerk's Notice.
- 5) The plaintiff's Second Amended Complaint includes, among other claims, a claim that Aviva, and numerous other defendants, violated Sections (a), (b), (c) and (d) of the federal RICO statute, 18 USC § 1961, et. seq.
- 6) Because this case involves a federal issue, the alleged violations of the federal RICO statute, the District Court has original jurisdiction pursuant to 28 U.S.C. § 1331.

7) Aviva is filing this motion within thirty days of service of the Second Amended Complaint, within thirty days of the date this action became removable, and within the time allowed for filing this petition. 28 U.S.C. § 1446.

8) Aviva will file a Notice of Filing of this Notice of Removal and a copy of this Notice of Removal with the clerk of the Worcester Superior Court.

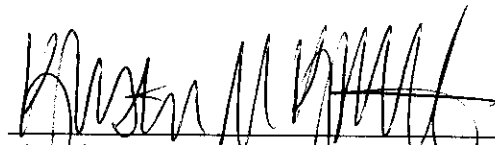
9) Pursuant to Local Rule 81.1, Aviva will also file in this Court certified or attested copies of all state court records and proceedings and a certified or attested copy of all state court docket entries, within thirty (30) days after filing this Notice.

WHEREFORE, for the foregoing reasons, the plaintiff Aviva Life Insurance Company hereby requests that this Honorable Court remove the above action, now pending in Worcester Superior Court, to this United States District Court.

Respectfully submitted,

AVIVA LIFE INSURANCE COMPANY

By its attorneys,

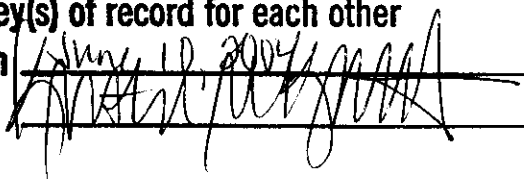


Rhonda L. Rittenberg, BBO # 550498
Kristin M. Knuutila, BBO #633828
Prince, Lobel, Glovsky & Tye LLP
585 Commercial Street
Boston, MA 02109
(617) 456-8000

Date: June 10, 2004

CERTIFICATE OF SERVICE

**I hereby certify that a true copy of
the above document was served upon the
attorney(s) of record for each other
party by mail on**

June 10, 2004


UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) Elizabeth Steffenberg v. T. Gene Gilman, et al.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

☒

I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

☐

II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.

*Also complete AO 120 or AO 121
for patent, trademark or copyright cases☐

III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.

☐

IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.

☐

V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

N/A

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☐NO ☒

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☐Central Division ☐Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☒Central Division ☐Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Rhonda L. Rittenberg, Kristin Knuutila, Attorneys for Aviva Life Ins. Co.
ADDRESS Prince, Lobel, Glvosky & Tye LLP, 585 Commercial Street, Boston, MA 02109TELEPHONE NO. (617) 456-8000

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Elizabeth R. Steffenberg

DEFENDANTS

T. Gene Gilman, et al.

(b) County of Residence of First Listed Plaintiff Worcester
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Louis Clavarra, Christine Collins
Bowditch & Dewey

311 Main Street, P.O. Box 15156, Worcester, MA

Attorneys (If Known)

George Rockas, Esq. (attorney for David Scoll)
Rhonda Rittenberg, Kristin Knuuttila (attorney
for Aviva Life Insurance Company)

(508) 929-3408

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 DEF Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4 DEF
Citizen of Another State ☐ 2 ☐ 2 DEF Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5 DEF
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6 DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 160 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input checked="" type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 830 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Federal Administrative Action <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Rel. Ins. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395M) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSDI Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause.)

Plaintiff maintains defendants have violated 18 U.S.C. §1961 et. seq., among other counts, in misappropriating retirement income and investments.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

JUDGE

DOCKET NUMBER

DATE
6/15/04

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE